

APPLICATION OF "MINIMUM CONTACTS" TEST TO DISTRIBUTORSHIP RELATIONS

Grobark v. Addo Machine Company
158 N.E.2d 73, 16 Ill. 2d 426 (1959)

An Illinois adding machine distributor sued a New York corporate manufacturer for breach of an exclusive distributorship agreement. Defendant did not maintain any physical contact with plaintiff within Illinois, and the sales, at discount rates, were consummated upon acceptance of plaintiff's orders in New York. The defendant was held not to be transacting any business within the provisions of the Illinois service of process statute, by virtue of the distributor relationship, and summons was quashed.

The problem of in personam jurisdiction over a foreign corporation has plagued the courts for many years. To derive the benefit and protection of a state during operations therein, the enterpriser should be willing to submit to the jurisdiction of the protecting state. The earliest cases made acquisition of jurisdiction over a foreign corporation a difficult, if not impossible, task.¹ Inroads were made into this rigid position² with the theory that "doing business" within the forum made the foreign corporation "present," and thus available for service of process.³

It was in this setting of fictional "consent" and "presence" that the modern test was expounded that due process required only certain "minimum contacts" to subject a defendant to a judgment in personam.⁴ This decision has been reaffirmed many times since its pronouncement.⁵ Illinois, as do many other states,⁶ has a jurisdictional statute covering foreign cor-

¹ *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714 (1877); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 517 (1839).

² *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404 (1855).

³ See, e.g. *Bank of America v. Whitney Cent. Nat'l Bank*, 261 U.S. 171 (1923); *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923); *Philadelphia & Reading R.R. v. McKibbin*, 243 U.S. 264 (1917); *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914); *Barrow S.S. Co. v. Kane*, 170 U.S. 100 (1897); *Cooper Mfg. Co. v. Ferguson*, 113 U.S. 727 (1885); *Wells, F. & Co. v. McArthur Bros. Mercantile Co.*, 42 Ariz. 405, 26 P.2d 1021 (1933), Annot., 60 A.L.R. 1004 (1929); *Metal Door & Trim Co. v. Hunt*, 170 Okla. 240, 39 P.2d 72 (1934); *Restatement, Conflict of Laws* § 167 (1934); 23 Am. Jur. "Foreign Corporations" § 361 (Supp. 1959).

⁴ *International Shoe Corp. v. Washington*, 326 U.S. 310, 316 (1945).

⁵ See e.g. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1951), *rehearing denied* 343 U.S. 917 (1952); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950); *Becher v. General Motors Corp.*, 167 F. Supp. 164 (Md. 1958); *Brandeis Mach. & Supply Co. v. Matewan Alma Fuel Corp.*, 147 F. Supp. 821 (E.D. Ky. 1957).

⁶ See e.g. Ala. Code, tit. 7, § 199(1) (Supp. 1953); Ark. Stat. Ann. §§ 27-30 (1947); Fla. Stat. Ann., §§ 47, 16 (1943); Md. Ann. Code, art. 23, § 88(d) (1951); Miss. Code Ann., § 1437 (1942); Ohio Rev. Code, §§ 1703.19, 1703.91 (1953); Utah R. Civ. P., 4(e)(4), [9] Utah Code Ann., § 460 (1953).

porations⁷ which authorizes in personam jurisdiction on personal service outside of the state in enumerated circumstances.⁸

The Court in the instant case appears to have construed the statute as reflecting a conscious purpose of the legislature to assert jurisdiction over a non-resident defendant to the extent permitted by the due process clause.⁹ Therefore, the final determination was actually based on a federal question, i.e., does the constitutional limitation, due process, prohibit in personam jurisdiction over a non-resident defendant on the basis of a distributor relationship?

Generally, "doing business," or a similar phrase, is the language of states' jurisdiction statutes to determine if a foreign corporation is subjected to in personam jurisdiction, but "minimum contacts" is the due process test of such a statute.¹⁰ The constitutional test is to apply the language to see if the statutory test affords enough "minimum contacts" so that the maintenance of the action does not offend traditional notions of fair play and substantial justice. In the ideal situation the facts which bring the corporation within the purview of the state statute will also satisfy the due process standard.¹¹ The range of "contacts" that have been held sufficient to subject a foreign corporation to in personam jurisdiction are as wide and varied as are the enterprises of the nation.¹²

⁷ Civil Practice Act, Ill. Rev. Stat. c. 110, §§ 16, 17 (1955).

⁸ *Ibid.*, § 17(1) . . . "Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from doing of any said acts. (a) The transaction of any business within the State; . . ."

⁹ *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); *Haas v. Fanchler Furniture Company*, 156 F. Supp. 564 (E.D. Ill. 1957); *Orton v. Woods Oil & Gas Co.*, 249 F.2d 198 (7th Cir. 1957) (employment of an engineer and lawyer not transaction of business); *but see Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 28 U.S.L.W. 2182 (7th Cir. 1959) (mailing catalogues in Illinois not transacting business).

¹⁰ See 23 Am. Jur. "Foreign Corporations" § 490 (Supp. 1959).

¹¹ *Supra* note 3; *Green v. Chicago, B. & Q.R.R. Co.*, 205 U.S. 530 (1907); *Minty v. Draper & Co.*, 57 F.2d 551 (1932); *McClarran v. Longdin-Brugger Co.*, 24 Ohio App. 437, 157 N.E. 828 (1927); *Wills v. Nat'l Mineral Co.*, 176 Okla. 193, 55 P.2d 449 (1936).

¹² *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220 (1957) (mailing of reinsurance certificates to person in Calif. and acceptance of premiums from out of state held enough contact to subject company to Calif. jurisdiction); *WSAZ Inc. v. Lyons*, 254 F.2d 242 (6th Cir. 1958) (broadcasting company broadcasting to another state per an advertising contract held sufficient contact); *Erlanger Mills Inc. v. Cohoes Fibre Mills Inc.*, 239 F.2d 502 (4th Cir. 1956) (single transaction by foreign corporation in state of forum not enough for minimum contact); *Schutt v. Commercial Travelers Mut. Acc. Ass'n*, 229 F.2d 158 (2nd Cir. 1956) (individual carrying company's policy into new state presents enough contact); *see Scholink v. National Airline*, 219 F.2d 115 (6th Cir. 1955) (flying leased plane over area with no office and no schedule flights presents enough contact); *Pulson v. American Rolling Mill Co.*, 170 F.2d 193 (1st Cir. 1948); *Ultra Sucro Co. v. Illinois Water Treatment Co.*, 146 F. Supp. 393 (S.D.N.Y. 1956) (sales office presided over by a salesman presents enough contact); *Compania De Astral, S.A. v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954), *cert. denied* 348 U.S. 943 (1955) (Panamanian

The majority in the instant case cites *Hanson v. Denckla* to support its conclusion. The United States Supreme Court in that case merely made the general observation that there are still some restrictions on in personam jurisdiction, and that the phrase "minimum contacts" certainly does not include "no contacts."¹³

The dissent suggests that the majority may have relied on a narrow interpretation of "transaction of any business," and, perhaps had overlooked "contacts" with the forum that would bring the corporation within the bounds of the Illinois statute and still meet the due process standard. The dissent concluded that the corporation did "transact" business within the state because of close, continuous contact with the Illinois distributor, and because of commitments which were to be performed almost solely in Illinois. The essence of the dissent's approach is characterized in its statement that "it is the business relationship . . . which constitutes the qualifying contact with the forum . . ."¹⁴ The dissent sees that relationship here as the necessary contact to meet the "minimum contacts" test. The dissent easily distinguishes *Hanson v. Denckla*,¹⁵ and points out that the manufacturer's ties with Illinois were as great as a number of other cases where jurisdiction was upheld as to foreign corporations.¹⁶

However, the instant case does appear to be squarely in accord with an earlier decision in Maryland,¹⁷ where, under a similar jurisdictional statute,¹⁸ the court concluded the distributor relationship precluded extending in personam jurisdiction.

Most of the state courts which have decided this question apparently hold that a distributor agreement does not satisfy the "minimum contacts" requirement,¹⁹ except in those situations where the manufacturer exercises

corporation with no office in U.S. held subject to jurisdiction of state on basis of single contract); *Manhattan Terrazzo Brass Co., Inc. v. A. Benzing, & Sons*, 38 Ohio L. Abs. 353 (1943) (solicitation of orders enough contact); *Haas v. Fanchler*, *supra* note 9; *State v. Amazon Ins. Co.*, 14 Ohio C.C. Dec. 387 (1903) (office in state of service, but making contracts of insurance for property out of state presents sufficient contacts); 7 Ala. L. Rev. 418 (1955).

¹³ *Hanson v. Denckla*, 357 U.S. 235 (1958), at 251 ". . . It is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts."

¹⁴ *Grobark v. Addo Machine Company*, *supra* at pp. 80, 81.

¹⁵ *Ibid.*; "That *Hanson* involves an entirely different problem is apparent from the discussion of that case in the court's opinion."

¹⁶ *Ibid.*, *McGee v. Int'l Life Ins. Co.*, *supra* note 12; *Perkins v. Benguet Consol. Mining Co.*, *supra* note 5; *Travelers Health Ass'n v. Virginia*, *supra* note 5.

¹⁷ *Arundel Crane Serv. Inc. v. Thew Shovel Co.*, 214 Md. 387, 135 A.2d 428 (1958) (goods sold by local dealer who bought at standard discount).

¹⁸ Md. Ann. Code, art. 23, § 88(a) (1951).

¹⁹ *Westwood Pharmacal Corp. v. Fielding*, 344 U.S. 897 (1952); *Florio v. Powder Power Tool Corp.*, 248 F.2d 367 (3rd Cir. 1957) (distributor could only sell defendant's products, and had to maintain working capital and sales quotas as defendant deemed proper); *Republic Supply Corp. v. Lewyt Corp.*, 160 F. Supp. 949 (E.D. Mich. 1958) (right to inspect the place of business and audit the records of distributor); *J. R.*

sufficient control to render the distributor his agent.²⁰ The wisdom in drawing the line at this point is open to question, particularly in light of the fact that many federal courts have found jurisdiction where the contacts appear to be slighter. A manufacturer who enters into a distributorship agreement with a person in another state derives much the same benefit from that relation as he would by marketing his products through an agent in that state. This distinction creates a handicap for the distributor by considerably restricting his choice of forums. Since the distributor probably could not sue in an Illinois federal court, by virtue of the rule in *Erie R.R. v. Tompkins*,²¹ he is forced to bring his action in either the manufacturer's home state, or some other state in which service of process can be had.

In view of the benefits which the manufacturer realizes in the state through such an arrangement, it is difficult to see how the assertion of in personam jurisdiction by that state can be said to offend traditional notions of fair play and substantial justice.

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Watkins Co. v. Stanford, 52 So.2d 325 (Ct. App. La. 1951); Eclipse Fuel Eng'r Co. v. Superior Court, 307 P.2d 739 (Ct. App. Cal. 1957); Dettman v. Nelson Tester Co., 95 N.W.2d 804 (Wis. 1959) (sales reports required, guarantee issued in name of foreign corporation, service centers established by foreign corporations).

²⁰ Rock-Ola Mfg. Co. v. Wertz, 249 F.2d 813 (4th Cir. 1958) (manufacturer required distributor to retain service man for repairs, showrooms, and office facilities, at distributor's own expense); Canvas Fabricators Inc. v. William E. Hooper & Sons Co., 199 F.2d 485 (7th Cir. 1952) (Foreign corporation left bank account in forum to pay office expenses, name on door, telephone directory, corporate letterhead used, orders sent to foreign corporation's office); Air Devices Inc. v. Titus Mfg. Corp., 167 F. Supp. 1 (N.J. 1958) (distributor bought at discount price and resold at higher price); Springs Cotton Mills v. Machinecraft Inc., 156 F. Supp. 372 (W.D.S.C. 1958) (distributor sold other manufacturer's products also); Edwards v. Scott & Fetzer Inc., 154 F. Supp. 41 (M.D.N.C. 1958) (no control over manner or method of resale by distributor); Anderson v. British Overseas Airway Corp., 144 F. Supp. 543 (S.D.N.Y. 1957); Clapper Motor Co. v. Robinson Motor Co., 119 F. Supp. 79 (Mont. 1954); Superior Concrete Accessories v. Kemper, 284 S.W.2d 482 (Mo. 1955); Feldman v. Thew Shovel Co., 214 Md. 387, 135 A.2d 428 (1957) (distributor took orders, bought equipment at discount from foreign corporation, and took credit risk); Knapp v. Robertson Mfg. Co., 155 N.Y.S.2d 490 (App. Div. 1957); Bargesser v. The Coleman Co., 230 S.C. 562, 96 S.E.2d 825 (1957); 20 C.J.S. "Corporations" § 1920 (Supp. 1959); 23 Am. Jur. "Foreign Corporations" §§ 297-300 (Supp. 1959).

²¹ 304 U.S. 64 (1938).